Health Care Reform Management Alert Series

More Guidance On "Minimum Value" - Not All Wellness Incentives Considered

Issue 62

This is the sixty-second issue in our series of alerts for employers on selected topics on health care reform. (Click here to access our general Summary of Health Care Reform and other issues in this series.) This series of Health Care Reform Management Alerts is designed to provide an in-depth analysis of certain aspects of health care reform and how it will impact your employer-sponsored plans.

[✓] Applies to grandfathered plans

[✓] Applies to new health plans

The Internal Revenue Service (IRS) released proposed regulations on the health insurance premium tax credit enacted by the Affordable Care Act (ACA) published in the Federal Register on May 3, 2013 requirements. They can be found *here*. The proposed regulations provide guidance regarding individuals who enroll in qualified health plans through Affordable Insurance Exchanges (Exchanges) and claim the premium tax credit.

Of particular note for employers, however, the proposed regulations also provided guidance on determining whether health coverage under an eligible employer-sponsored plan provides minimum value health coverage (Minimum Value). This issue supplements Issues *38* and *46* which also addressed Minimum Value.

Background

A large employer may be liable for an assessable payment or penalty under ACA if one of its full-time employees receives a premium tax credit when purchasing coverage through an Exchange. Individuals generally may not receive a premium tax credit, however, if they are eligible for employer-sponsored minimum essential coverage, which is affordable and provides Minimum Value. So an employer could avoid the ACA penalty if it offers Minimum Value, affordable health coverage to its full-time employees. Minimum Value for these purposes means the plan's share of the total allowed costs of benefits provided under the plan is at least 60 percent of the costs.

Proposed Safe Harbors for Determining Minimum Value

The previously issued HHS regulations described several options for determining Minimum Value. Plans may use the Minimum Value Calculator (available *here*). Alternatively, a plan may determine Minimum Value through a safe harbor established by HHS and the IRS. For plans with nonstandard features that are incompatible with the Minimum Value Calculator or a safe harbor, plans may determine Minimum Value through an actuarial certification. Finally, a plan in the small group market satisfies Minimum Value if it meets the requirements for any of the levels of metal coverage (bronze, silver, gold, or platinum).

The proposed IRS regulations propose and request comment on three design-based safe harbors for meeting the Minimum Value requirements for plans that cover all of the benefits included in the Minimum Value Calculator. The preamble states that these safe harbors are meant to provide an easy way for sponsors of "typical" employer-sponsored health plans, that would clearly meet the 60% threshold if measured using the Minimum Value Calculator, to determine Minimum Value. The following are the proposed safe harbors:

Deductible	Percentage Plan Cost-Sharing	Maximum Out-of-Pocket Limit for Employee Cost-Sharing	Other
$3,500 Integrated Medical and Drug	80%	$6,000	
$4,500 Integrated Medical and Drug	70%	$6,400	$500 Employer Contribution to HSA
$3,500 Medical Deductible and $0 Drug Deductible	60% - Medical 75% - Drugs	$6,400 Drug Co-pays of: $10 - 1st Tier $20 - 2nd Tier $50 - 3rd Tier 75% - Coinsurance for specialty drugs	

HSAs/HRAs and Wellness Program Incentives

HSAs. The proposed regulations provide that all amounts contributed by an employer for the current plan year to an HSA are taken into account in determining the plan's share of costs for purposes of Minimum Value and are treated as amounts available for first dollar coverage.

HRAs. The proposed regulations also provide that amounts newly made available under an HRA that is integrated with an eligible employer-sponsored plan for the current plan year are taken into account for purposes of Minimum Value **if** these amounts may only be used for cost-sharing and not for paying insurance premiums. If the newly available HRA contributions may be used for paying insurance premiums, then they are taken into account in determining affordability, but not Minimum Value.

Wellness Programs. The proposed regulations provide that a plan's share of costs for Minimum Value and affordability purposes is generally determined **without** regard to reduced cost-sharing available under a nondiscriminatory wellness program. This means if the plan offers a reduced premium for participants who participate in a wellness program, and a non-reduced premium for those participants who do not participate, the non-reduced premium is considered for purposes of determining whether the plan is affordable. Similarly, if a plan offers reduced cost-sharing for participants who engage in a wellness program, the reduced cost-sharing is not taken into account in determining Minimum Value.

The proposed regulations include two exceptions to this general rule.

Tobacco-Free Programs

The first exception is for nondiscriminatory wellness programs designed to prevent or reduce tobacco use. For these types of wellness programs, Minimum Value and affordability may be calculated assuming that every eligible individual satisfies the terms of the program relating to prevention or reduction of tobacco use. It is unclear why the IRS is giving relief for this specific health condition but not others that are targeted by wellness programs.

Existing Wellness Programs

Second, the proposed regulations also include an exception for wellness programs in place on May 3, 2013 (the date the proposed regulations were published in the Federal Register) for plan years beginning before January 1, 2015 (so 2014 for calendar year plans). For these existing wellness programs, if the plan would have met the Minimum Value or affordability standard if the wellness incentive-rates were factored in, the employer can still avoid a penalty for the 2014 plan year.

Other Nuggets In Regulations

The proposed regulations take aim at a practice the IRS feels employers may be targeting -- mandatory enrollment in a group health plan that does not offer Minimum Value or is unaffordable. Employers may be considering such an arrangement as a way to offer minimum essential coverage and avoid the penalty. Generally, a plan will provide minimum essential coverage as long as it is a "group health plan," regardless of that plan's actuarial value. Here's how such an arrangement would work:

- The employer would offer a group health plan that offers minimum essential coverage but does not provide Minimum Value (i.e., a plan that covers only preventive services, but not other forms of major medical coverage).
- If the employee declined the lower-tiered offering, he or she could still receive a tax credit (and the employer would be penalized), because a preventive care-only plan would not provide Minimum Value.
- Employees are not eligible for a tax credit, however, if they actually enroll in minimum essential coverage (even if that coverage does not provide Minimum Value). So, the employer would default all employees into the minimum essential coverage plan (presumably with no participant cost-sharing), as a way of avoiding a penalty while not offering a Minimum Value health plan.

The IRS states that any arrangement under which employees are required, as a condition of employment or otherwise, to be enrolled in such a plan, and that does not give the employees an effective opportunity to terminate or decline the coverage, raises a variety of issues including:

- If an employer maintains such an arrangement, it would not be treated as having made an offer of coverage and would be subject to the resulting penalty.
- The government agencies may treat such arrangements as impermissible interference with an employee's ability to access premium tax credits.

To be clear, the IRS only views this as a concern if the employer defaults employees into a plan that provides minimum essential coverage but does not provide Minimum Value. Based on informal discussions with the IRS, it appears employers could still offer a basic plan that provides minimum essential coverage but not minimum value, as long as employees may choose to decline that plan.

So, for instance, an employer could offer a preventive services-only plan (which would comply with the requirement to cover first-dollar preventive care at 100%), and the employer would never be subject to the larger penalty under the employer mandate ($2,000 multiplied by all full-time employees). While the employer may still be subject to the smaller penalty ($3,000 multiplied by only those full-time employees who receive a tax credit) because they have not offered a plan that provides Minimum Value, presumably this penalty would be significantly less than the alternative.

The IRS is seeking comments to be received by July 2, 2013. Taxpayers may apply the proposed regulations for taxable years ending before January 1, 2015.

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